

B. Appeals of Decisions of Arbitrazh Courts of the First Instance

1. Period for Appeal, Place and Manner of Consideration


Appeals of final decisions of arbitrazh courts of the first instance must be filed within a month of the issuance of the decision. The time limitation for appeal is considered a standard procedural limitation, and is subject to renewal by the court if it finds sufficient reasons for the failure to file within the period. Appeals are filed with, and considered by, the same arbitrazh court that issued the original decision, by a panel of three judges.¹ The appeal may not be considered by a judge who participated in the consideration of the case in the first instance, however, and if it is not possible for the appeal to be considered by the court which issued the original decision, the case may be transferred to another arbitrazh court of the same level.

2. Who May File

The appeal may be filed by a participant in the case, or in instances in which the court of first instance made a decision concerning the rights and obligations of persons who were not summoned to participate in the case, by those persons as well.

3. Form of Appeal, Required Content

The appeal complaint must be signed by the appellant or his representative. The appeal complaint will be returned to the appellant if:

-  it is not signed or was signed by someone whose position is not stated;
- evidence of the sending of copies to other participants is not appended; or
- evidence of the payment of the filing fee is not appended (or in the alternative a petition for delay, reduction or payment in installments).

If the appeal is submitted after the one month period for appeal, the appeal complaint will be returned if it is filed without the attachment of a petition for the renewal of the appeal period.

¹ An appeal may be considered by a panel of another odd number of judges, but this very rarely occurs.

CHECKLIST FOR AN APPEAL FILING

Information Required in an Appeal Filing

- ☐ name of the court to which the appeal is addressed
- ☐ name of the person appealing, and of other persons participating in the case
- ☐ name of the court which took the decision being appealed, the number of the case, date of the issuance of the decision and the subject of the dispute
- ☐ the bases upon which the appealing party considers the decision in the first instance incorrect, including reference to legal and regulatory acts that are relevant
- ☐ the demand of the appealing party (reversal in full or in part, etc)
- ☐ a list of the documents appended to the complaint

Documents Required as Appendices to an Appeal Filing

- ☐ evidence of payment of the filing fee (receipt)
- ☐ evidence that the filing and attachments were sent to the other parties in the case
- ☐ authorization of a representative to sign the appeal (if applicable)

If the appeal is accepted for proceedings, the court issues a determination stating the acceptance and the date and time for consideration of the appeal, and sends this to the participants in the case. Upon receiving the appeal complaint, the participants in the case may make a response, which must be received by the court before the day set for the consideration of the appeal. Evidence of the sending of the response to the other participants, such as a signature acknowledging delivery or the receipt for registered post, must be appended.

A sample appeal complaint, determination accepting the appeal for proceedings, and response to the appeal complaint appear in Appendix L to the Handbook.

4. Consideration of the Appeal by the Arbitrazh Court

The court considers the appeal according to the procedural rules established for consideration of cases in the first instance, with the exceptions established by Chapter 20 of the APC. The court may consider new evidence if the participant presenting the evidence shows that it could not have been presented during the previous consideration of the case. The court is not bound by the appeal complaint or the arguments of the participants, and must verify the legality and basis for the original decision in all respects. It will not, however, consider new claims or demands not made during the consideration of the case in the first instance. The court must consider the appeal within a one month period of receipt of the complaint. The appeals court has the right:

- to leave the decision of the court of first instance in place;
- to reverse the decision in full or in part and make a new decision on the parts reversed;
- to make changes in the decision;
- to reverse the decision and terminate proceedings in the case; or
- to reverse the decision and leave the case without consideration in whole or in part.

5. Grounds for Appeal

The grounds for appeal, and for the appeals court to reverse or change the decision of the court of first instance, are:

- ▢ incomplete clarification of the circumstances of the case having significance for the case. This usually refers to failure of the court to examine all of the evidence in the case, refusal to call witnesses or demand evidence of significance to the case, mistaken exclusion of relevant evidence from the case, and similar problems;
- ▢ inadequate proof of circumstances that the first arbitrazh court found to have been established by the evidence, and which have significance in the case. This may include reliance by the court on evidence improperly obtained, on unreliable evidence, on evidence that does not meet requirements of relevance and admissibility, or on mutually contradictory evidence. It may also refer to case in which the court made presumptions on the basis of the evidence, but the presumed facts or circumstances themselves were not proved;
- ▢ failure of the conclusions set forth in the decision to correspond to the circumstances and materials of the case. This may include cases in which the conclusion of the court is presented without justification, is self-contradictory, or is unsupported by the evidence in the case. It may also relate to cases in which the court failed to consider some of the evidence or circumstances in the case which were significant; or
- ▢ violation or improper application of the norms of substantive or procedural law, if the violation resulted or might have resulted in the issuance of an incorrect decision. This may include cases in which the court applied the wrong law, failed to apply an applicable law, or interpreted the law incorrectly in its application. It may also include cases in which the court applied a law which was no longer or not yet in force, or a regulatory act which was not consistent with governing law.

Some violations of procedural law by the courts of the first instance are always grounds for the reversal of the decision. If one or more of these violations is shown, the

decision will be reversed “unconditionally” — that is, without reference to the legal correctness of the decision. In most cases, a decision reversed due to this type of violation will be sent for a new consideration by the lower court.

GROUND FOR UNCONDITIONAL (AUTOMATIC) REVERSAL OF A COURT DECISION

- consideration of the case by an illegal composition of the court
- consideration of the case in the absence of any of the participants, who was not properly informed of the place and time of the court session
- if the rules concerning language and interpretation were violated
- if the court issued a decision concerning the rights and obligations of persons who were not summoned to participate in the case
- failure to sign the decision or signature by someone other than the judge(s) named in the decision as having heard the case
- issuance of the decision by judges who did not consider the case
- absence of a protocol of the court hearing or absence of the required signatures on the protocol

A sample decree of an arbitrazh court of the appellate instance appears as Appendix M to the Handbook.

6. Issuance and Content of Decree; Entry into Force

The appellate court issues a “decree” rather than a “decision” concerning the results of its consideration of the case, which must be signed by all of the judges participating in the case.

A decree of the appeals court enters into force from the time of its issuance and is sent to the persons participating in the case by registered mail with notice of delivery. The decree may be appealed to the cassational instance — the federal arbitrazh court for the “circuit” in which the appeals court is located.

REQUIRED CONTENTS OF A DECREE OF THE APPEALS COURT

- ▣ the name of the court, number of the case, date of issuance of the decree, composition of the court, names of those present in the session and their authorities
- ▣ date of the issuance of the first instance decision, and the name(s) of the judge(s) who issued it
- ▣ names of the participants in the case and of the person who filed the appeal
- ▣ a short description of the substance of the decision made in the first instance
- ▣ the bases on which the appeal was made
- ▣ arguments in the responses to the appeal (if any)
- ▣ the circumstances established by the court, evidence on which its conclusions about the circumstances are based, arguments why the court accepts or rejects particular evidence and applies or refuses to apply laws and regulatory acts cited by the participants and relied upon by the first instance court
- ▣ if the decision of the first court is reversed or amended, the reasons for the appellate court's disagreement with the first court's conclusion
- ▣ the final conclusion of the appellate court